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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File Nos. BMPCT-910625KP
)	BMPCT-910125KE
For Extension of Time)	BTCCT-911129KT
to Construct)	
)	
and)	
)	
For Assignment of)	
Construction Permit for)	
Station WRBW(TV))	
Orlando, Florida)	

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To: The Honorable Joseph Chachkin
Administrative Law Judge

REQUEST FOR CERTIFICATION OF ISSUE

Pursuant to Section 1.301(b) of the Rules, Rainbow Broadcasting, Limited (RBL) requests permission to appeal the A.L.J.'s *Order*^{1/} requiring RBL to disclose the names and addresses of its limited partners before any demonstration of relevance under Rule 1.315. In the alternative, RBL requests that the A.L.J. modify his ruling as permitted by Rule 1.301(b).

The request presents a new and novel question of law and policy not previously presented to the Commission: whether disclosure of the identity and addresses of

1/ The A.L.J. first directed that RBL disclose its limited partners at a prehearing conference held January 30, 1996, Tr. 127-129. That oral ruling was reaffirmed by *Memorandum Opinion and Order*, FCC 96M-21, released February 23, 1996.

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properly insulated limited partners of an entity (RBL) whose qualifications are not in issue can be required without an appropriate showing of their relevance to the designated issues.^{2/} Moreover, such disclosure here threatens irreparable harm to RBL, while there is no procedural impediment to corrective action by the A.L.J.

While the A.L.J. held himself without authority to consider this matter in the context of a reconsideration petition by the provisions of Rule 1.106(a)(1), Rule 1.301(b) specifically permits the A.L.J., in response to the present request, to modify his outstanding *Order*^{3/} to permit withholding of the names and addresses until a proper request is made under Rule 1.315. Such action is essential to protection of RBL's due process rights since the petitioner is otherwise without recourse to prevent

2/ RBL's limited partners hold non-attributable interests under the provisions of the Commission's multiple ownership rules (§ 73.3555) and ownership reporting requirements (§ 73.3615) and are not implicated in the designated issues, which involve only the behaviour or qualifications of Rainbow Broadcasting Company, the predecessor partnership in which none of RBL's partners had any ownership or involvement. While disclosure of limited partners prior to a discovery request is required in comparative cases involving applications for new facilities under Rule 1.315(e), that requirement (1) is by its terms restricted to the active and passive owners of the applicant whose comparative qualifications are in issue; and (2) has not been extended to non-comparative cases.

3/ Section 1.301(b) permits either the A.L.J. at the present juncture or the Commission upon certification to modify the relevant *Order*.

an injury which could not be redressed by appellate success. It would not, on the other hand, harm the legitimate interests of any party nor delay the proceeding in any way.^{4/}

That the threat of injury to RBL is not hypothetical is illustrated by the attached affidavit of Joseph Rey, General Manager of WRBW. Press Broadcasting, the original proponent of the request for disclosure of RBL's limited partners prior to discovery, has continuously sought to interfere with the operation of Station WRBW and the business affairs of RBL. It has also continuously and unsuccessfully sought to persuade both the Commission and the Court of Appeals to require disclosure of the identity of RBL's limited partners in the earlier stages of this litigation, although both have consistently ignored its wholly unsubstantiated requests. If RBL is required to disclose the identity of its limited partners to Press, RBL has every reason to believe that

4/ Ignorance of the names of RBL's limited partners in no way impedes Press' discovery efforts since Press need not know their names to seek discovery against them. Commission Rule 1.315(a)(1) permits notices of deposition to be served on an identified class: "[I]f the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs" is sufficient. RBL is present in this proceeding to accept such a generic notice.

the information will be used to further undermine its business relations.

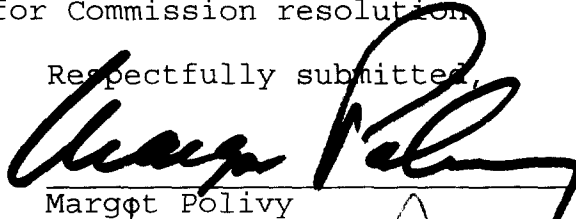
Fundamental due process dictates that a party not be deprived of any right to meaningful objection. While the Commission's Rules (Sections 1.313, 1.315 and 1.319) permit RBL to seek a protective order against discovery, those protective rules are not available until a discovery request is made. The presently outstanding *Order* requiring predisclosure thus permits injury to RBL before it can avail itself of the due process protections of the Commission's rules. And since the anticipated injury flows from the act of disclosure of the names, the *Order* also permits irreparable injury to RBL inasmuch as the injury could not be redressed or remediated by subsequent vindication of RBL's position, either by the A.L.J. or on appeal.

The necessity for interlocutory relief is thus apparent, since otherwise no relief is possible and RBL is effectively denied due process. Commission cases make clear the fact that under such exigent circumstances even a disallowance of appeal by the A.L.J. would not defeat such an appeal: Interlocutory relief is mandated "where the proceeding involves basic and far reaching considerations of public policy and vital concerns relating to

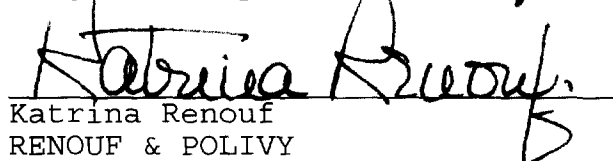
the public interest which could not otherwise adequately be protected." *Communications Satellite Corp.*, 32 F.C.C.2d 533, 534 (1971); *CBS Broadcasting Corp.*, 84 F.C.C.2d 229 (1980). See also, *Rocket Radio, Inc.*, 58 F.C.C.2d 663, 664 (1976) ("Equitable relief may be granted at any stage of the proceeding upon a proper showing").

Under the circumstances both fundamental fairness and considerations of due process suggest the wisdom of modification of the outstanding Order to require a showing of relevance in advance of disclosure of RBL's limited partners. In the alternative, the question should be certified for Commission resolution.

Respectfully submitted,



Margot Polivy



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Limited

26 February 1996

STATEMENT OF JOSEPH REY

My name is Joseph Rey. I am the General Manager of Station WRBW and a principal of Rainbow Broadcasting Company, Inc., the general partner of Rainbow Broadcasting, Limited.

I have read the attached pleading entitled "Rainbow Broadcasting, Limited Petition for Reconsideration of Oral Ruling" and state that the representations contained therein, including those relating to the limited partners of RBL, are true and correct to the best of my knowledge and belief.

I further state that Press Broadcasting Company, Inc. has interfered with the operation of Station WREW on numerous occasions and in numerous ways, including but not limited to the following:

1. In 1987, with full knowledge that Rainbow Broadcasting Company had an exclusive right to an antenna space at 1500 feet on the Bithlo Tower, Press induced the landlord of the tower to give Press reasonable assurance, for FCC filing purposes, of space for the Channel 18 antenna in the same aperture in order to successfully complete Press' frequency swap between Channel 68 and Channel 18. The ensuing litigation continued for four years. In 1991, upon learning that Rainbow Broadcasting Company

had reached a settlement of its dispute with the Bithlo Tower Company under which, *inter alia*, Rainbow received substantial monetary and other compensation, Press attempted to persuade Bithlo Tower Company not to sign the settlement agreement.

2. On or about January 19, 1994, Press harassed Rainbow Broadcasting Company by filing a damage suit in Orange County, Florida against the company and its principals, alleging that the Rainbow Broadcasting Company Bithlo Tower litigation was frivolous. The Court dismissed the Press complaint as baseless.

3. On or about January 19, 1994, Press interfered with Rainbow Broadcasting, Limited's negotiations to lease studio space at Universal Studios, resulting in months of delay, added expense and higher construction costs.

4. In late January 1994, Press, after adequate notice from the Bithlo Tower landlord, refused to reduce power of its station, WKCF, located on the same tower as WRBW, to permit installation of the WRBW tower, hence endangering the lives of the installers in an attempt to prevent the installation from taking place. The installation was only made possible by the landlord's

physical intervention and temporary reduction of WKCF's transmitting power.

5. In September 1995, after WRBW had emerged as the winning bidder against Press for the syndication rights to "Star Trek: Deep Space Nine," Press attempted to obtain the rights by interfering with the contractual relations between Paramount and WRBW by seeking to persuade Paramount that Rainbow was in danger of imminent loss of license because of Press' legal action against the FCC. Press alleged that because WRBW was about to lose its license, WRBW was not capable of fulfilling its commitments under the program agreement. As a result, WRBW-TV was forced to renegotiate a substantially larger down payment and accelerate payment terms in order to preserve its rights to the program.

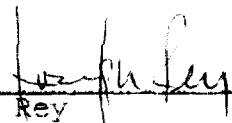
In light of this history, it is my absolute conviction that Press would use any information concerning the identity of Rainbow Broadcasting, Limited's limited partners to undermine their relationship with Rainbow. Any such interference would have a serious adverse impact upon WRBW's operation and development. In this case, where Rainbow's limited partners are passive investors who had no relationship with Rainbow Broadcasting Company, the predecessor permittee of Channel 65, or the

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events related to the issues designated for hearing, disclosure of the names and addresses of Rainbow's limited partners would be gratuitous and potentially extremely injurious to Rainbow Broadcasting Limited's business relationships.

This statement is true and correct to the best of my knowledge and belief and is made under penalty of perjury.

February 6, 1996



Joseph Rey

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Request for Certification of Issue were sent first class mail, post-age prepaid, this twenty sixth day of February 1996, to the following:

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